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By: Mr Richard Foster PSM, CEO

Family Court of Australia
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Your ref:

18 October 2012

Ms Louise Glanville
First Assistant Secretary
Access to Justice Division
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Dear Ms Glanville,

**Courts and Tribunals Legislation (Administration) Amendment Bill 2012
Family Court and Federal Circuit Court**

Thank you for a copy of the draft Bill which was sent to us by Dr Smrdel on Monday.

We have now had an opportunity to review the Bill and give some more thought to the drafting. As presently drafted, the Chief Federal Magistrate has concerns about the structure, and we both agree that it is not how we envisaged it would be drafted.

Whilst the Bill as drafted is consistent with the overall proposal in the options paper for a single agency under the Public Service Act and Financial Management Act, we envisaged conceptually that there would be a separate entity created having its own separate legislation, to be called the Family Court and Federal Circuit Court Agency headed by a single CEO.

We consider that the legislation establishing the agency supporting the operations of both courts should be stand alone legislation rather than contained in the Family Law Act as presently drafted. There are many reasons for that, including the desirability of having a flexible structure.

In the present circumstances, having all the functions residing within the Family Law Act, in the part dealing with the structure of the Family Court, presents it, rightly or wrongly as a Family Court takeover.

Having had the opportunity to reflect upon previous consultation the Chief Justice and CEO had with you, and the draft legislation, it is our view that the model should be somewhat akin to the Speaker and the President of the Senate where the two heads of jurisdiction exercise a co-equal power in relation to the common administration of the courts and a

stand alone power that may not be interfered with by the other in relation to their own courts. The CEO would be subject to direction by each head of jurisdiction in relation only to the affairs of his or her court.

The CEO would also be charged with the responsibility for making proper arrangements for the provision of registry and other services in the general federal law jurisdiction of the Federal Circuit Court with the Federal Court of Australia or otherwise as required.

We are of the view that the same person can fulfil the 3 different roles but given the discussion this sometimes evokes, our view is that the role of Principal Registrar should be strengthened by amending the Federal Magistrates Act so that there is a Principal Registrar with reporting responsibility to the head of jurisdiction as there is in the Family Law Act. This would enable different heads of jurisdiction at some later time to allow the CEO to focus on the Agency and the Principal Registrar to be like a CEO re the courts.

Interestingly this is probably akin to the old model before the courts became self administering. That is to say the Department was like the Agency and the Principal Registrar was responsible for the judicial and judicial related work in the court.

As far as other officers of the courts are concerned we favour the current position which is that the persons that are to be officers of the courts would be engaged by the CEO as APS employees and where necessary appointed by the CEO of the agency as officers of each court. This would include the Principal Registrar who will be separate in each court, the Marshal and Registrars and Family Consultants together with other persons appointed by the CEO as presently occurs.

We would be happy to have a teleconference to discuss the relative merits of this proposal and the way it can best be effected .

Yours sincerely

Diana Bryant AO
Chief Justice

John Pascoe AO CVO
Chief Federal Magistrate

